

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRUCE H. YUILLE,

CIVIL ACTION NO. 09-11203

Plaintiff,

DISTRICT JUDGE BERNARD A. FRIEDMAN

v.

MAGISTRATE JUDGE DONALD A. SCHEER

AMERICAN HOME MORTGAGE
SERVICING, INC., et al.,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION
FOR SANCTIONS UNDER FED.R.CIV.P. 11**

This matter is before the magistrate judge on Defendants' Motion for Sanctions Under Fed.R.Civ.P. 11. The Motion was filed on November 17, 2009. Plaintiff filed his Response on November 25, 2009. The Motion was brought on for hearing on May 11, 2010, and taken under advisement.

Having reviewed Defendants' Motion, together with Plaintiff's Response, and having had the benefit of oral argument, I find that the Motion should be denied.

Defendants assert that Plaintiff has violated Fed.R.Civ.P. 11(b)(2) by filing claims, defenses and other legal contentions that were not warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. Defendants further maintain that Plaintiff failed to engage in a reasonable inquiry as to whether the Complaint was warranted under existing law.

Plaintiff's fundamental theory of recovery is that nominee mortgages such as those granted to MERS as nominee for mortgage lenders constitutes an impermissible separation of the security interest from the underlying debt. I have issued a Report and

Recommendation that judgment be entered for Defendants and against Plaintiff. There is little doubt, however, that MERS mortgages represent a departure from traditional real estate mortgage transactions. In my view, Defendants themselves have had difficulty in establishing a clear record of transfer of the promissory note in this case, although they were able to establish their possession of the original document endorsed in blank by the Lender. While I find that Plaintiff's case is insufficient to justify the relief sought, I do not find that it is so flagrantly frivolous as to justify the imposition of Rule 11 sanctions.

Defendants further maintain that Plaintiff has violated Fed.R.Civ.P. 11(b)(1) because the instant action was presented for the improper purposes of harassing and causing unnecessary delay to Defendants in foreclosing the Plaintiff's mortgage. They outline various actions undertaken by Plaintiff in an effort to protect himself against foreclosure. In particular, Defendants describe the broad array of motions filed by Plaintiff in the course of this action. I agree with Defendants that Plaintiff's motion practice was excessive and largely meritless. Nonetheless, I note that Plaintiff did ultimately agree to withdraw numerous claims and filings, and that he was reasonably cooperative with this court's efforts to define the essential issues in the case and to secure comprehensive dispositive motions from both sides. While he has had legal training, Plaintiff is not an accomplished litigator. In the last analysis, I conclude that his prosecution of this action does not warrant Rule 11 sanctions.

IT IS THEREFORE ORDERED that Defendants' Motion for Sanctions Under Fed.R.Civ.P. 11 is DENIED.

s/Donald A. Scheer
DONALD A. SCHEER
UNITED STATES MAGISTRATE JUDGE

DATED: September 22, 2010

CERTIFICATE OF SERVICE

I hereby certify on September 22, 2010 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to the following non-registered ECF participants on September 22, 2010: **Bruce Yuille**.

s/Michael E. Lang
Deputy Clerk to
Magistrate Judge Donald A. Scheer
(313) 234-5217